

1 JUDGE SIPPEL: Yes. There's a
2 division of labor across these cases. So this
3 is not your run-of-the-mill situation.
4 There's nothing that -- Be that as it may,
5 does anybody have any different view with
6 respect to whether or not Mr. Burke did
7 testify to that effect?

8 MR. KIM: I have a transcript,
9 Your Honor. I can move that in.

10 JUDGE SIPPEL: Wait a minute.
11 Before we have to do that.

12 MR. SOLOMON: If he's going to use
13 the transcript, that's fine, Your Honor.

14 MR. BURKE: This is something
15 again because I wasn't present at the
16 WealthTV.

17 JUDGE SIPPEL: Let's go -- No, I
18 don't think this is Wealth. Am I -- It's the
19 NFL case as I understand it.

20 MR. BURKE: No, this is the
21 objection issue that we're talking about, Your
22 Honor.

1 JUDGE SIPPEL: WealthTV, I don't
2 understand what WealthTV has to do with it.
3 If the question was asked in WealthTV and the
4 objection was sustained.

5 MR. BURKE: That's my
6 understanding.

7 MR. SOLOMON: Yes.

8 JUDGE SIPPEL: But it was asked in
9 NFL and it was apparently there was not a
10 similar objection.

11 MR. BURKE: I don't believe there
12 was.

13 JUDGE SIPPEL: Let's go back to
14 the transcript.

15 MR. KIM: May I approach, Your
16 Honor?

17 JUDGE SIPPEL: You certainly may.

18 BY MR. KIM:

19 Q Mr. Orszag, I'm showing you what's
20 been marked as MASN Exhibit No. 243 for
21 identification. I'll ask you whether you
22 recognize that, sir.

1 A There is no cover page. So I'm
2 not 100 percent sure what it is. I'm sorry.

3 Q I'll represent to you that this is
4 excerpts from Mr. Burke's testimony during the
5 NFL case.

6 JUDGE SIPPEL: Thank you. And
7 just so it's absolutely clear, let's have the
8 witness identify who Mr. Burke is and what his
9 relationship is to the company.

10 MR. KIM: You bet, Judge.

11 BY MR. KIM:

12 Q Do you know who Mr. Burke is, sir?

13 A Yes, I do.

14 Q Who is he?

15 A Well, I'll just read from page one
16 of what you've given so that I get it
17 precisely right. It says, "the Chief
18 Operating Officer of Comcast Corporation."

19 Q I'm going to ask you to turn to
20 page 1696 of that MASN Exhibit 243 and that's
21 the number on the top right-hand corner. Do
22 you see that, sir?

1 A Okay.

2 Q And actually the question begins
3 on 1695. So maybe we should go there. It is
4 line 17. Could you just read that question
5 and the following answer?

6 A Sure. "While you may recall when
7 my colleague, Mr. Schmidt, here when he took
8 your deposition, I don't know, probably about
9 a month ago, a few weeks ago, and he asked if
10 there are benefits. You mentioned there were,
11 that it's fair to say that the programming
12 channels that we own get treated like siblings
13 as opposed to like strangers. Do you remember
14 that?" He said and then the answer is "I do."

15 Q Were you aware of that testimony,
16 sir?

17 A Yes, I was.

18 Q And how does that factor into your
19 analysis of whether there is a double standard
20 that Comcast applies to its RSNs as opposed to
21 independent RSNs like MASN?

22 A Right. You have to remember that

1 when you own your own programming the cost of
2 carriage is different for you than carrying
3 unaffiliated programming.

4 Q And you think that's perfectly
5 appropriate, correct?

6 A Of course. That was one of the
7 great benefits of vertical integration and one
8 of the benefits identified by the FCC about
9 why they support certain cases of vertical
10 integration.

11 Q And so to you it is not a double
12 standard that Comcast affiliated networks get
13 treated like siblings as opposed to like
14 strangers, correct?

15 A That is correct.

16 Q And did you also know that Mr.
17 Burke testified that affiliated networks
18 received "a different level of scrutiny"?

19 A I do know that.

20 Q And again to you that's perfectly
21 appropriate, correct?

22 A One of the benefits of --

1 Q Mr. Orszag.

2 A Yes, it's appropriate.

3 Q Just for the record, you've given
4 that speech before. If you would just answer
5 my question, I would very much appreciate it.

6 A Yes, it is.

7 Q So let me just ask the question
8 again and try and make a nice clean record for
9 the FCC. Would you agree with me that you
10 think there's no problem for Comcast to give
11 its own RSNs "a different level of scrutiny"?

12 A I believe that that's okay
13 relative to the standard that I applied. Yes.

14 Q Now was it relevant to your
15 opinion on discrimination that Comcast itself
16 desired MASN's programming?

17 A I wouldn't call it irrelevant.
18 But given there is no prospect of Comcast now
19 getting access to that programming I don't
20 think it factors into the decision of this
21 sort of analysis that I conduct in this case
22 given that facts and circumstances here.

1 Q Mr. Orszag, you went to Princeton,
2 didn't you?

3 A Yes, I did.

4 Q I really wanted to go to
5 Princeton, but I didn't get in. But I'm not
6 going to hold that against you. If I said
7 that I really want to hire Princeton grads,
8 but then reject every female Princeton grad
9 that applies for a job, does my prior
10 statement exist as proof of my discrimination
11 against women?

12 A One would want to know some more
13 facts in the hypothetical that you just laid
14 out.

15 Q It's certainly relevant, isn't it?

16 A Again, I put it in the right --
17 the context that I put it in. It was relevant
18 at the time, but at this point there's no
19 prospect that Comcast will have access to that
20 programming that I think it was Mr. Wyche or
21 Mr. Gluck basically said that the programming
22 is MASN's for as far as the eye can see.

1 Q Could you answer my question?

2 A I think I did.

3 Q Let me try it again. I probably
4 phrased it incorrectly. Is it relevant that
5 Comcast itself wanted the very programming
6 that MASN acquired?

7 A And in 1995 and 1996 it was a
8 relevant fact. I don't believe it's relevant
9 today.

10 Q So the fact that they wanted it
11 back in 1995 and 1996 in your judgment --

12 A I mean 2005-2006. I apologize.

13 Q You're steering me down the road
14 and I'm going right down there with you. My
15 apologies. So the fact that Comcast wanted
16 this programming in 2005 and 2006 is not
17 relevant to you in determining whether Comcast
18 discriminates today. Is that right?

19 A That is correct.

20 Q Did you consider --

21 JUDGE SIPPEL: That programming
22 being with the Nationals and the Orioles.

1 MR. KIM: Yes, sir. I'm going to
2 go a few more questions down the road and
3 hopefully it will clear any confusion Your
4 Honor has.

5 BY MR. KIM:

6 Q Did you consider what Comcast
7 thought the demand for the Orioles' rights
8 would be?

9 A Comcast in what capacity? As a
10 distributor or programmer? I'm sorry.

11 MR. KIM: May I approach, Your
12 Honor?

13 JUDGE SIPPEL: Please.

14 BY MR. KIM:

15 Q Mr. Orszag, I'm showing you what's
16 been marked as MASN Exhibit No. 107 for
17 identification and I'll ask you, sir, whether
18 you recognize that document.

19 JUDGE SIPPEL: It's highly
20 confidential. Does that affect anything?

21 MR. KIM: It does, Your Honor.
22 We'll have the one witness excused.

1 JUDGE SIPPEL: Very good.

2 BY MR. KIM:

3 Q So, Mr. Orszag, my original
4 question to you and please take your time and
5 look at it as long as you need to, the initial
6 question is do you recognize that document.

7 A I have seen this in preparation
8 for this hearing and I may have seen it
9 previously. I've seen a lot of documents.
10 I'm not just sure if I saw this one.

11 Q Is it an internal email of
12 Comcast?

13 A It appears that way, yes. Well,
14 let me actually rephrase that. The first
15 email looks like it's an email from MASN which
16 was sent to someone at Comcast as well as
17 external counsel. There are then a variety of
18 internal emails on top of that.

19 Q What is the subject line of the
20 email, sir?

21 A "MASN expands to 24 hour
22 programming NAT Os Rav" which I assume means

1 Ravens.

2 Q I'd like to direct your attention
3 to the email from Mike Doyle that's sent on
4 Wednesday, August 2, 2006. Do you see that,
5 sir?

6 A Yes, I do.

7 Q And that email is sent to David
8 Cohen, Matt Bond and Steve Burke, correct?

9 A I see that, yes.

10 Q Do you know who Mike Doyle is?

11 A Well, it notes here that he's the
12 president of the Eastern Division.

13 Q Do you know that as a fact?

14 A I do not know that as a fact.

15 Q Okay. But you do know that it's
16 part of this document, correct?

17 A Yes, I do.

18 Q And do you know who David Cohen
19 is?

20 A Yes, I do.

21 Q Who is David Cohen?

22 A I don't know his precise title,

1 but I believe he's in charge of the external
2 affairs, all matters related to Comcast's
3 perception and regulatory matters, etc., out
4 there.

5 Q He's an executive vice president
6 of Comcast, correct?

7 A I believe. I will not disagree
8 with you that that's his title.

9 Q And he only reports to Steve
10 Burke, correct?

11 A I have heard that testimony.

12 Q I'm sorry. Brian Roberts.

13 A I mean I heard the Brian Roberts
14 testimony.

15 Q Again, that wasn't a trick
16 question. I'm sorry if I misled you there.
17 And who is Matt Bond?

18 A He's in charge of programming
19 acquisition for Comcast Cable.

20 Q And again there's Mr. Burke's name
21 on that, too, as well, correct?

22 A Yes.

1 Q And if you could just read the
2 very short email by Mr. Doyle into the record,
3 I would appreciate it.

4 A And just let's put the date. It
5 says, "August 2, 2006" just so we're clear.
6 "Thus," Thus may sound -- I assume he actually
7 means this. But he says, [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q What's a P&I hit, sir?

15 A P&L.

16 Q P&L. I'm sorry

17 A Profit and Loss.

18 Q And do you see the answer from
19 Steve Burke at the top and I'll note for the
20 record the document is in evidence, but there
21 is an intervening email in the middle. But
22 what is the response from Steve Burke on

1 August 2, 2006?

2 A [REDACTED]

3 [REDACTED]

4 Q Okay, and what is he responding
5 to? Could you read that brief message from
6 Dave Watson?

7 A Dave Watson writes, [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q Now, Mr. Orszag, is MASN Exhibit
14 107 something that you relied upon in forming
15 your opinion in this case?

16 A I can't recall if I saw this prior
17 to my submissions or not, but, again as I
18 noted, the issue of acquiring programming was
19 relevant in 2005-2006. But subsequent to this
20 email, they entered into an affiliation
21 agreement and MASN programming is sort of
22 MASN's for as far as the eye can see according

1 to the testimony I heard last week.

2 Q Let me try my question again. Mr.
3 Orszag, is MASN Exhibit No. 107 a document
4 that you relied upon in forming your opinion
5 in this case?

6 A Sitting here today, I can't tell
7 you if I saw this prior to the submission of
8 my expert report or not.

9 Q Okay. I'm sorry. I must be
10 asking this question very poorly. Is MASN
11 Exhibit No. 107 a document that you relied
12 upon in forming your opinion in this case?

13 A I did not rely upon this document.

14 Q Thank you, sir. Isn't it true,
15 Mr. Orszag, that Comcast actually sued to
16 retain the rights to the Orioles?

17 A I believe that to be the case,
18 yes.

19 Q Is that something you relied upon
20 in forming your analysis of discrimination in
21 this case?

22 A It's something I considered.

1 Q But you didn't rely upon it, did
2 you, sir?

3 A No, I did not.

4 Q It's not set anywhere in your
5 expert report, correct?

6 A No, it's not.

7 Q And isn't it true that Comcast
8 sent letters to other MVPDs telling them not
9 to do business with MASN?

10 A I have seen those letters, yes.

11 Q And that's not something you
12 relied upon in forming your opinion in this
13 case either, correct?

14 A That is correct.

15 Q Did you consider in forming your
16 expert opinion on discrimination what Comcast
17 thought the demand for Nationals' rights would
18 be?

19 A I did consider that, yes.

20 Q Isn't it true that Comcast sent a
21 letter to Bud Selig, the Commissioner of
22 Baseball, imploring him to give the Nationals'

1 rights to Comcast?

2 A I've seen documents to that
3 effect, yes.

4 Q And you don't rely upon any of
5 those documents in forming your opinion on
6 discrimination, do you, sir?

7 A No, they're a completely separate
8 issue.

9 Q Isn't it true that after pursuing
10 these rights for more than two years Comcast
11 refused to carry MASN on any of the systems
12 for nearly two baseball seasons?

13 A It's a statement of fact they
14 didn't carry it during 2005 and they didn't
15 carry it until sometime in 2006. Again, the
16 statements of the executives of Comcast was
17 that the price didn't justify the viewer
18 interest in the programming.

19 Q That's your testimony as to your
20 understanding of why Comcast didn't carry MASN
21 for the first two years.

22 A It's my understanding that they

1 wanted the programming at the beginning. You
 2 have to parse it into bits because the first
 3 thing is they thought they owned the rights to
 4 the Orioles to begin with and that's what they
 5 sued over. And again this is my understanding
 6 reading the legal briefs, etc., and then once
 7 there was a conclusion of that, I believe the
 8 judge denied that case, then there was a
 9 decision not to carry based on price and I
 10 believe at that time most of the other MVPDs
 11 in Washington, D.C. were not carrying it as
 12 well.

13 Q Who at Comcast said that when they
 14 weren't carrying the Nationals in 2006 it was
 15 because of MASN's pricing? Who told you that?

16 A I believe it was part of an
 17 interview or at some point I learned that
 18 information. I don't know precisely who.

19 Q Isn't it true that Comcast
 20 actually testified before Congress that they
 21 thought the price that the Nationals were
 22 getting from MASN was too low?

1 A You're confusing two different
2 matters. So let me try to explain it better.

3 Q No. Let me see if I can ask the
4 questions. Isn't it true that Comcast
5 executives testified in Congress that the
6 price that the Nationals were receiving for
7 their programming rights from MASN was too
8 low?

9 A You're comparing apples and
10 oranges.

11 Q Can you answer that question?

12 A The price -- Well --

13 Q Can you answer that question?

14 A I will try to answer the question,
15 but let me put it in context.

16 Q No. Mr. Orszag, I think the rules
17 for these cross examinations have been laid
18 very clearly and you've witnessed those rules
19 being applied, haven't you?

20 A Yes, I have.

21 Q You have extremely competent
22 counsel. He will redirect you on any subject

1 matter that I get wrong and it could be a long
2 redirect for all I know.

3 A Okay.

4 Q If you could just answer my
5 question, I would very much appreciate it.
6 Okay?

7 A Comcast as a programming arm
8 believed that the price of the --

9 Q Mr. Orszag.

10 A -- that were received --

11 Q Mr. Orszag.

12 MR. KIM: Your Honor, move to
13 strike.

14 JUDGE SIPPEL: As being
15 unresponsive.

16 MR. KIM: Yes, Your Honor.

17 MR. BURKE: He just answered.

18 THE WITNESS: I just did answer.

19 MR. KIM: No, he did not. Move to
20 strike as non-responsive, Your Honor.

21 JUDGE SIPPEL: Wait a minute.

22 MR. BURKE: I think he just

1 testified. He just responded and answered the
2 question, Your Honor, because I think that
3 stands. If you want to ask him again in a
4 different way, but I don't see why that should
5 be stricken. It's probative testimony.

6 JUDGE SIPPEL: Well, he wants it
7 stricken because he says it's not responsive
8 to the question.

9 MR. BURKE: And I would submit,
10 Your Honor, that it is responsive.

11 JUDGE SIPPEL: Why is it not? You
12 were asking for a yes or no and he went beyond
13 that.

14 MR. KIM: That's right, Your
15 Honor. I was asking for a simple statement of
16 fact as to what Comcast testified before
17 Congress and he keeps telling me it's apples
18 and oranges. And now he --

19 JUDGE SIPPEL: Does he know?

20 MR. KIM: I believe he does know,
21 Your Honor.

22 JUDGE SIPPEL: Do you?

1 THE WITNESS: As I said --

2 JUDGE SIPPEL: Ask him that
3 question.

4 MR. KIM: Yes, sir. I will.

5 JUDGE SIPPEL: I'm going to
6 reserve on your motion to strike.

7 MR. KIM: Very good.

8 JUDGE SIPPEL: But let's go at
9 this one more time. Ask him specifically
10 whether or not he's familiar with that
11 testimony.

12 BY MR. KIM:

13 Q Mr. Orszag, you are aware, are you
14 not, sir, that Comcast testified before
15 Congress that MASN was paying the Nationals
16 rights fees that were too low?

17 A Comcast as a programming arm
18 thought that the rights fees that the
19 Nationals were receiving was too low. Yes.

20 JUDGE SIPPEL: Doesn't he answer
21 your question?

22 MR. KIM: He did, Your Honor.

1 There's a lot of editorializing going on.

2 JUDGE SIPPEL: Well, we'll cut
3 through that. We'll let it go. But go ahead.
4 Keep moving.

5 BY MR. KIM:

6 Q And so Comcast, after pursuing
7 these rights fees, did not carry MASN for
8 nearly two baseball seasons even in
9 Washington, D.C., correct?

10 A That is a statement of fact.

11 Q Is it your testimony today that
12 that was in the best interest of Comcast
13 viewers?

14 A It's not something I've analyzed.

15 Q So it's not something you
16 considered.

17 A No, because the -- As I said --

18 JUDGE SIPPEL: That's all right.

19 You said no.

20 THE WITNESS: I said no.

21 BY MR. KIM:

22 Q Is it your testimony that that

1 foreclosure in every market including
2 Washington, D.C. was in Comcast's best
3 economic interest?

4 A It's not something I've analyzed.

5 Q You haven't rely upon any of that
6 information, have you?

7 A With regard to their decision in
8 '05 and '06 to not carry MASN, no.

9 Q You believe that Comcast is a
10 rational profit maximizer, don't you, sir?

11 A As an economist, one has to assume
12 that yes.

13 Q And you assume that in making your
14 opinion in this case, correct?

15 A Yes.

16 Q But in Comcast after seeking the
17 Nationals' right so vigorously and then
18 refusing to carry MASN in any area for nearly
19 two seasons including Washington, D.C., as an
20 economist, isn't that about as economically
21 rational as taking their marbles and going
22 home?

1 A It's entirely rational to -- They
2 are two separate analyses and it's entirely,
3 it's potentially rational what they did.

4 JUDGE SIPPEL: So you asked him if
5 it was rational and he's saying it was
6 rational.

7 MR. KIM: He's saying that he
8 believes it is.

9 MR. BURKE: Actually, I think it
10 misstates the witness' testimony, but it will
11 say what it says.

12 BY MR. KIM:

13 Q Mr. Orszag, MASN is an RSN,
14 correct?

15 A That is correct, yes.

16 Q And an RSN means a regional sports
17 network, true?

18 A That is true.

19 Q Okay. And Comcast Sports Net in
20 Philadelphia is an RSN, too.

21 A That is correct.

22 Q And Comcast Sports Net Mid-

1 Atlantic is also an RSN, correct?

2 A That is correct.

3 Q Comcast owns CSN Philly, true?

4 A I believe they have a controlling
5 stake. I don't know if they own 100 percent.
6 But, yes, they have a controlling ownership
7 stake.

8 Q And Comcast also owns CSN Mid-
9 Atlantic, correct?

10 A With the same caveat. I don't
11 know the precise stake, but yes.

12 Q You agree that Comcast Sports Net
13 Mid-Atlantic is a close competitor with MASN
14 in competing for programming rights, true?

15 A I'm not going to agree to the
16 "close." I know that they are -- they compete
17 and there could be other close competitors as
18 well. So the answer is they're one of the
19 direct competitors. I believe that was the
20 term we used in the deposition, but I may have
21 used the term "close competitor."

22 Q I'm not asking you what you used

1 in your deposition. I'm asking you for your
2 testimony. Would you agree that they are
3 close competitors?

4 A I would agree that they are close
5 competitors for programming content. Let's
6 just be clear on that.

7 Q Very good. In fact, they have
8 competed for the rights to the Washington
9 Redskins, correct?

10 A That is correct.

11 Q The Baltimore Ravens, correct?

12 A I believe that to be true.

13 Q And the D.C. United Soccer Team,
14 true?

15 A I've seen evidence of that, yes.

16 Q As an economist, what happens to
17 prices for a good when bidders enter the
18 market?

19 A It depends.

20 Q If there's a one bidder market and
21 another bid enters the market, what happens to
22 prices?